

Message Text

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UNCLAS CANBERRA 4218

FOR: ASSISTANT SECRETARY KATZ

E.O. 11652: N/A
TAGS: EINV, EMIN, AS
SUBJ: D.M. MINERALS COMPENSATION CLAIM

REF: STATE 132679

1. DEPARTMENT OF NATIONAL RESOURCES (DNR), WAS QUERIED CONCERNING D.M. MINERAL'S CLAIM BUT REFUSED TO COMMENT ON THE MATTER. CONTACT THEN WAS MADE WITH DERRY HILL, MANAGING DIRECTOR, DILLINGHAM AUSTRALIA CONCERNING THE CLAIM, AND HE PROVIDED A STATUS REPORT PREPARED BY THE FIRM'S LAWYER, MICHAEL BRADFIELD. HILL STATED THAT DILLINGHAM WOULD PRESENT COMPLETE STATUS REPORT TO DEPARTMENT DURING UPCOMING MEETINGS IN WASHINGTON.

2. DILLINGHAM MET ON MARCH 31 AND JUNE 2, FIRST WITH DNR OFFICIALS AND THEN WITH THE MINISTER FOR NATIONAL RESOURCES, DOUG ANTHONY. DURING THESE MEETINGS DILLINGHAM WAS TOLD THAT NDR WAS UNDER INSTRUCTIONS FROM THE CABINET TO CONSIDER ONLY ONE YEAR'S PROFIT (1977) AS THE BASIS FOR COMPENSATION AND NOT THE TOTALITY OF THE INVESTMENT OR ITS VALUE AS A GOING CONCERN. DILLINGHAM BELIEVES THAT A STANDARD OF VALUATION FOR A LONG TERM PROJECT THAT GIVES CONSIDERATION ONLY TO ONE YEAR'S LOSS OF PROFITS IS NOT JUST COMPENSATION BUT ASSUMES THE CHARACTER OF AN OUTRIGHT CONFISCATION AND WOULD
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BE ABSOLUTELY UNSATISFACTORY.

3. DILLINGHAM IS HOPEFUL THAT THEY WILL BE ABLE TO BUILD A BETTER CASE FOR RECEIVING ADEQUATE COMPENSATION THROUGH THE INTEVENTION OF DOUG ANTHONY. ANTHONY TOLD DILLINGHAM, THAT IN HIS ROLE AS MINISTER, HE HAS THE AUTHORITY TO SUBMIT ADDITIONAL INFORMATION AND MAKE RECOMMENDATIONS TO CABINET.

IT APPEARS THAT ANTHONY MAY BE THE KEY TO WHETHER OR NOT DILLINGHAM IS ABLE TO CONVINCE CABINET TO ALTER THEIR TERMS OF REFERENCE IN THE CLAIMS CASE.

4. COMMENTS: SINCE GOA DECLINES TO DISCUSS CASE OFFICIALLY AT THIS STAGE WE CAN ONLY COMMENT ON BASIS DILLINGHAM SUMMARY. FROM THIS IT APPEARS THAT THERE IS FUNDAMENTAL ISSUE OVER BASIS OF COMPENSATION WHICH MUST BE SOLVED BEFORE QUESTION OF DETAILED CALCULATION OF DAMAGES BECOMES RELEVANT. SUBJECT TO DETAILED FACTS OF CASE, WE BELEIVE DILLINGHAM JUSTIFIED IN VIEW THAT ONE YEAR PROFIT IS VERY INADEQUATE BASIS FOR COMPENSATION AND THAT UNLESS ANTHONY USES HIS AUTHORITY TO OBTAIN CABINET AGREEMENT ON BROADER BASIS, DILLINGHAM WILL HAVE JUSTIFIABLE GREIVANCE. AT THE SAME TIME WE RECOGNIZE THAT VALIDITY OF THIS CONCLUSION RESTS ON ASSUMPTIONS CONCERNING DILLINGHAM INVESTMENT, DEVELOPMENT COSTS AND EXTENT OF RECOVERABLE INVESTMENT WITH RESPECT TO WHICH WE DO NOT HAVE FACTS. FOR THIS REASON A FINAL JUDGMENT WOULD REQUIRE DETAILS DILLINGHAM HAS NOT YET PRESENTED.
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